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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

Following consultations among members of the Security Council, the President of the Council made the following introductory statement, on behalf of the Council, at its 3059th meeting, on 11 March 1992, in connection with the Council's consideration of the item entitled:

"(a) The situation between Iraq and Kuwait

"(b) Letter dated 2 April 1991 from the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council (S/22435)

Letter dated 4 April 1991 from the Chargé d'affaires a.i. of the Permanent Mission of France to the United Nations addressed to the President of the Security Council (S/22442)

Letter dated 5 March 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Belgium to the United Nations addressed to the President of the Security Council (S/23685)".

I. GENERAL OBLIGATION

"1. The resolutions concerning the situation between Iraq and Kuwait impose a number of general and specific obligations upon Iraq.

"2. As regards the general obligation, Iraq is required, under paragraph 33 of Security Council resolution 687 (1991), to give official notification to the Secretary-General and to the Security Council of its acceptance of the provisions of that entire resolution.

"3. Iraq signified its unconditional acceptance in letters dated 6 and 10 April 1991 (S/22456 and S/22480, respectively) and 23 January 1992 (S/23472).

"4. When the Security Council met at the level of Heads of State and Government on 31 January 1992 the concluding statement made by the President of the Council, on behalf of its members (S/23500), contained the following passage:

> 'Last year, under the authority of the United Nations, the international community succeeded in enabling Kuwait to regain its sovereignty and territorial integrity, which it had lost as a result of Iraqi aggression. The resolutions adopted by the Security Council remain essential to the restoration of peace and stability in the region and must be fully implemented. At the same time the members of the Council are concerned by the humanitarian situation of the innocent civilian population of Iraq.'

"5. On 5 February 1992, the President of the Security Council issued a statement on behalf of its members (S/23517) in which he stated, among other things:

> 'In connection with the Secretary-General's factual report (S/23514) on Iraq's compliance with all the obligations placed upon it by resolution 687 (1991) and subsequent relevant resolutions, the members of the Security Council note that while much progress has been made, much remains to be done. ... The members of the Council are disturbed by the lack of Iraqi cooperation. Iraq must implement fully resolution 687 (1991) and subsequent relevant resolutions as was stated in the statement read out by the President of the Council on behalf of its members in the meeting held on 31 January 1992 with the participation of the heads of State and Government (S/23500).'

"6. In a statement made on behalf of the Council on 28 February 1992 (S/23663), the President said:

> 'The members of the Council demand that Iraq immediately implement all its obligations under Council resolution 687 (1991) and subsequent resolutions on Iraq. The members of the Council require the Government of Iraq to communicate directly to the Council without further delay an authoritative and unconditional acknowledgement of its agreement to accept and implement the above noted obligations, including specifically to comply with the determination of the Special Commission requiring the destruction of ballistic missile-related equipment. The members of the Council emphasize that Iraq must be aware of the serious consequences of continued material breaches of resolution 687 (1991).'

"7. I must also draw attention to the further report of the Secretary-General on the status of compliance by Iraq with the obligations placed upon it (S/23687).

"8. From the aforementioned statements by the President and in view of the reports of the Secretary-General, it will be seen that, despite Iraq's statements of unconditional acceptance of Security Council resolution 687 (1991), the Security Council has determined that Iraq is not in full compliance with all of its obligations.

II. SPECIFIC OBLIGATIONS

"9. In addition to the general obligation to accept the provisions of resolution 687 (1991) in their entirety, several Security Council resolutions impose specific obligations upon Iraq.

(a) Respect for the inviolability of the international boundary

"10. By paragraph 2 of resolution 687 (1991) the Security Council demands that Iraq respect the inviolability of the international boundary and the allocation of islands previously agreed upon between Iraq and Kuwait. Pursuant to paragraph 3 of that resolution, the Secretary-General established a Boundary Demarcation Commission to demarcate the boundary between Iraq and Kuwait. Paragraph 5 of the same resolution requires Iraq and Kuwait to respect a demilitarized zone (DMZ) established by the Security Council. The Council has been informed that Iraq has respected the DMZ and that it has fully participated in the work of the Boundary Demarcation Commission. It has also been informed that Iraq refuses to withdraw a number of police posts that are not in line with UNIKOM's principle that both sides should stay 1,000 metres from the boundary line shown on UNIKOM's map.

(b) Weapons-related obligations

"11. Section C of resolution 687 (1991) imposes certain specific obligations upon Iraq with respect to its chemical and biological weapons programmes, its ballistic missile programmes with a range greater than 150 kilometres and its nuclear programmes. These obligations are elaborated upon in resolutions 707 (1991) and 715 (1991). The obligations are defined in paragraphs 8, 9, 10, 11, 12 and 13 of resolution 687 (1991) and they are elaborated upon in paragraphs 3 and 5 of resolution 707 (1991) and paragraph 5 of resolution 715 (1991).

"12. The information relevant to Iraq's compliance with the obligations laid down in the paragraphs of the Security Council resolutions to which I have just referred is reproduced in annex I to the Secretary-General's report (S/23687).

"13. By resolution 699 (1991), the Security Council decided that the Government of Iraq shall be liable for the full costs of carrying out the tasks authorized by section C of resolution 687 (1991). No funds have so far been received from Iraq to meet this liability.

"14. The Council has noted that since the adoption of resolution 687 (1991) progress has been made in the implementation of section C of that resolution but that much remains to be done. There is serious non-compliance with the obligations concerning the programmes for weapons of mass destruction and ballistic missiles and the members of the Council have found this to be a continuing material breach of resolution 687 (1991).

"15. The Special Commission has informed the Council about the outstanding matters that would at the present time appear to be the most important. The Council's attention is invited again to annex I of the Secretary-General's report, S/23687 of 7 March 1992.

"16. The Council has also noted the statement by the International Atomic Energy Agency (IAEA) contained in the Secretary-General's report of 25 January 1992 (S/23514, section C of the annex). The attention of the Council is drawn to information annexed to the further report of the Secretary-General, S/23687 (annex II), of 7 March 1992, relative to the two last inspections by the IAEA, on Iraq's compliance with its obligations under United Nations Security Council resolutions as they relate to nuclear activities.

"17. In a statement issued on behalf of the members of the Council (S/23609), the President stated on 19 February 1992 that:

> 'Iraq's failure to acknowledge its obligations under resolutions 707 (1991) and 715 (1991), its rejection up until now of the two plans for ongoing monitoring and verification and its failure to provide the full, final and complete disclosure of its weapons capabilities constitute a continuing material breach of the relevant provisions of resolution 687 (1991).'

"18. In a further statement made on 28 February 1992 on behalf of the Council (S/23663), the President said:

> 'The members of the Council deplore and condemn the failure of the Government of Iraq to provide the Special Commission with full, final and complete disclosure, as required by resolution 707 (1991), of all aspects of its programmes to develop weapons of mass destruction and ballistic missiles with a range greater than 150 kilometres, including launchers, and of all holdings of such weapons, their components and production facilities and locations, as well as all other nuclear programmes; and the failure of Iraq to comply with the plans for ongoing monitoring and verification approved by resolution 715 (1991). ... Furthermore, the members of the Council equally deplore and condemn Iraq's failure, within the time prescribed by the Special Commission at the request of Iraq, to commence destruction of ballistic missile-related equipment designated for destruction by the Special Commission. The members of the Council reaffirm that it is for the Special Commission alone

to determine which items must be destroyed under paragraph 9 of resolution 687 (1991).'

(c) Repatriation of and access to Kuwaiti and third-country nationals in Iraq

"19. As regards Kuwaiti and third-country nationals in Iraq, Security Council resolutions 664 (1990), 666 (1990), 667 (1990), 674 (1990), 686 (1991) and 687 (1991) impose an obligation on Iraq to release, facilitate repatriation of, and arrange for immediate access to them, as well as the return of the remains of any deceased personnel of the forces of Kuwait and of the Member States cooperating with Kuwait pursuant to resolution 678 (1990). Furthermore, paragraph 30 of resolution 687 (1991) requires Iraq to extend all necessary cooperation to the International Committee of the Red Cross (ICRC) in facilitating the search for Kuwaiti and third-country nationals still unaccounted for.

"20. The Security Council was informed by the ICRC in January 1992 that almost 7,000 persons have returned from Iraq to their countries since the beginning of March 1991. The ICRC also stated that despite all its efforts, there are still thousands of persons reported missing by the parties to the conflict.

"21. A special commission composed of the representatives of France, Iraq, Kuwait, Saudi Arabia, the United Kingdom and the United States has met under the auspices of the ICRC, to try to reach an agreement on, among other things, the implementation of paragraph 30 of resolution 687 (1991). However, the ICRC has informed the Council that it has not yet received any information as to the whereabouts of the persons reported missing in Iraq. Nor has it received detailed and documented information on the search conducted by the Iraqi authorities. Finally, it is also still awaiting information on persons who have died while in custody.

"22. The attention of the Council is drawn to section 4, paragraphs 12 to 14, of the Secretary-General's report contained in document S/23687 of 7 March 1992.

(d) Iraq's liability under international law

"23. Another obligation concerns Iraq's liability under international law. In resolution 674 (1990), the Security Council reminds Iraq 'that under international law it is liable for any loss, damage or injury arising in regard to Kuwait and third States and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq'. Its liability under international law is reaffirmed in paragraph 2 (b) of resolution 686 (1991) and paragraph 16 of resolution 687 (1991). Resolution 687 (1991) further specifies that it 'is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to

foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait'.

"24. By paragraph 18 of the same resolution, the Security Council created a Fund to pay compensation for claims that fall within paragraph 16, to be financed by a percentage of the value of the exports of petroleum and petroleum products from Iraq. In view of the existing economic sanctions against Iraq under resolution 661 (1990), Iraq was permitted by the Security Council under resolutions 706 (1991) and 712 (1991) to sell a limited quantity of oil, as an exception, a portion of the proceeds from which would be used to provide financial resources for the Fund. To date, it has not availed itself of this possibility. The Council notes that this authorization is due to lapse on 18 March 1992. The members of the Council are aware of a request by Iraq for a five-year moratorium on meeting its financial obligations, including payments into the Compensation Fund.

(e) Repayment and servicing of Iraq's foreign debt

"25. With regard to another obligation, the Security Council, in paragraph 17 of resolution 687 (1991), demands that Iraq scrupulously adhere to all of its obligations concerning servicing and repayment of its foreign debt.

"26. The attention of the Council is drawn to paragraphs 17 and 18 of the Secretary-General's report (S/23687) of 7 March 1992.

(f) Return of property

"27. I now turn to the question of return of property. The Security Council, in paragraph 2 (d) of resolution 686 (1991), demands that Iraq immediately begin to return all Kuwaiti property seized by it, to be completed in the shortest possible period. The members of the Council have noted with satisfaction that, as stated in the further report of the Secretary-General, Iraqi officials involved with the return of property have extended maximum cooperation to the United Nations to facilitate the return.

(g) Monthly statements of gold and foreign currency reserves

"28. Another obligation is set out by paragraph 7 of resolution 706 (1991), under which the Government of Iraq is required to provide to the Secretary-General and appropriate international organizations monthly statements of its gold and foreign currency reserves. To date, no such statements have been provided to the Secretary-General or to the IMF.

(h) Undertaking not to commit or support acts of international terrorism

"29. By paragraph 32 of resolution 687 (1991), Iraq is required not to commit or support acts of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to condemn unequivocally and renounce all acts, methods, and practices of terrorism.

"30. The Council notes Iraq's statements contained in letters dated 11 June 1991 (S/22687 and S/22689) and 23 January 1992 (S/23472) that it is a party to international conventions against terrorism and that it has never pursued a policy favourable to international terrorism as defined by international law.

(i) Security Council action with respect to the Iraqi civilian population

"31. Resolutions 706 (1991) and 712 (1991) provide a means for Iraq to meet its obligations to supply its civilian population with needed humanitarian assistance, particularly food and medicine. To date, Iraq has refused to implement these resolutions. In fact after initiating discussions with Secretariat representatives on implementation, Iraq abruptly terminated the discussions.

III. SECURITY COUNCIL RESOLUTION 688 (1991)

"32. I should now like to refer to the demands by the Security Council with respect to the Iraqi civilian population. In paragraph 2 of resolution 688 (1991), the Security Council demands that Iraq, as a contribution to removing the threat to international peace and security in the region, end the repression of its civilian population. In paragraphs 3 and 7, the Security Council insists that it allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq, and demands its cooperation with the Secretary-General to these ends.

"33. The Security Council remains deeply concerned at the grave human rights abuses that, despite the provisions of resolution 688 (1991), the Government of Iraq continues to perpetrate against its population, in particular in the northern region of Iraq, in southern Shi'a centres and in the southern marshes (Commission on Human Rights resolution 1992/71 of 5 March 1992). The Security Council notes that this situation is confirmed by the report of the Special Rapporteur of the Commission on Human Rights (E/CN.4/1992/31, also to be circulated in document S/23685) and by the comments of the Office of the Executive Delegate of the Secretary-General contained in the further report of the Secretary-General.

"34. The members of the Council are particularly concerned at the reported restrictions on the supplies of essential commodities, in particular food and fuel, which have been imposed by the Government of Iraq on the three northern governorates of Dohuk, Erbil and Suleimaniya. In this regard, as the Special Rapporteur has noted in his report, inasmuch as the repression of the population continues, the threat to international peace and security in the region mentioned in resolution 688 (1991) remains.

IV. CONCLUDING OBSERVATION

"35. In view of the observations on the record of Iraq's performance, the Security Council has considered itself justified in concluding that Iraq has not fully complied with the obligations placed upon it by the Council. It is the Council's hope and expectation that this meeting will prove an invaluable opportunity to advance in the consideration of this issue as required in the interest of world peace and security, as well as that of the Iraqi people."